



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

July 21, 2006

CERTIFIED MAIL
7004 2510 0004 1824 7777

David Penney
2400 East 30 South
P.O. Box 312
Beaver, Utah 84713-0312

Subject: Findings of Fact, Conclusions, Order and Finalized Assessment for
MC-2005-04-04, Little Spot, S027024, Penney's Gemstones, Millard County, Utah

Dear Mr. Penney:

On January 10, 2006, an Informal Conference was held to review the fact of violation and proposed assessment for state violation MC- 2005-04-04. As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing and Assessment Conference, the attached documents shall constitute the findings of fact, conclusions, order, and finalized assessment.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties of \$770.00 with the Division within thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, mail c/o Vickie Southwick at the address listed below.

Sincerely,

Mary Ann Wright
Associate Director, Mining
Assessment Conference Officer

VS

Enclosures:

Findings

Final Assessment

UTAH DIVISION OF OIL, GAS AND MINING
WORKSHEET FOR **FINAL** ASSESSMENT OF PENALTIES

COMPANY: Penney' Gemstones
PERMIT: S/027/024, Little Spot, Millard County
VIOLATION: MC-2005-04-04

ASSESSMENT CONFERENCE OFFICER: Mary Ann Wright

		Proposed Assessment	Final Assessment
(1)	History/Previous Violations	<u>0</u>	<u>0</u>
(2)	Seriousness	(20 + 8) <u>28</u>	(15 + 4) <u>19</u>
(3)	Negligence	<u>8</u>	<u>8</u>
(4)	Good Faith	<u>0</u>	<u>0</u>
	Total Points	<u>36</u>	<u>27</u>

Proposed Fine: \$ 1,760

TOTAL Final ASSESSED FINE \$770.00

NARRATIVE: Conducting mining outside of the small mine permit area, in an area more than one and one half times the permitted 5 acres. Damage occurred but was relatively small and repaired by grading and seeding.

Permittee was aware the permit was only for 5 acres and mined outside the permit area.. This was a difficult abatement to accomplish, which was the posting of \$8,800 bond, marking the 5-acre permit area, and providing an accurate legal description and map. Compliance was achieved within timeframes that were extended several times, so no good faith points were awarded in the final assessment. The Cessation Order was issued on 8/2/05 and terminated May 2006.

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)

BEFORE THE DIVISION OF OIL, GAS AND MINING
MINERALS REGULATORY PROGRAM
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

---ooOoo---

IN THE MATTER OF THE, Little	:	INFORMAL CONFERENCE
Spot Mine, Millard COUNTY, UTAH		For MC 2005-04-04
	:	FINDINGS, CONCLUSIONS
		AND ORDER
		CAUSE NO. S/027/024
	:	

On January 10, 2006, the Division of Oil, Gas and Mining ("OGM") held an informal conference concerning the Fact of Violation and the Assessment for Cessation Order, MC-2005-04-04 issued to the Little Spot Mine, Millard County, Utah. The following individuals attended: Tom Munson and Daron Haddock for the Division.

Presiding: Mary Ann Wright
Associate Director, Mining
Division of Oil, Gas and Mining

Petitioner: David Penney, Penney's Gemstones

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner and the Division in connection with this informal conference, and on information in the files of the Division.

FACTS PRESENTED: Fact of the Cessation Order and Assessment

1. On January 10, 2006, the Division of Oil, Gas and Mining (OGM or Division) held an Informal Conference concerning the Cessation Order issued at the Little Spot Mine in Millard County, Utah.
2. Cessation Order MC-2005-04-04 was issued 8/2/05 for 'Failure to obtain a large mining permit prior to expanding beyond 5 acres'.
3. In an email received 12/7/05, Mr. Penney requested an Informal Conference. Notice of the informal conference was properly given. Pursuant to Utah Code Ann. Section 40-8- 9 and Utah Administrative Rule R647-6-102.

4. At the informal conference, the Petitioner presented the following information to the Conference Officer.
5. Mr. Penney stated that he was out in the spring of 2005 with Tom Munson and believed that he had been advised to stay away from the roughened area, the area he had mined and "scraped up" or roughened. He then assumed that the mine had been reduced to under 5 acres via this grading. He also stated that he liked the idea of 'letting it seed naturally'.
6. Mr. Penney contended that the disturbance, according to his map, was under 5 acres. He was using some of the area for stockpiling materials which have value. Mr. Penney has a nationwide bond posted for this site through the BLM. He wondered 'why it should be so hard to be competitive' in this business and 'why burden people who have done a good job.'
7. Mr. Munson pointed out that he had explained the requirements in the spring concerning expanding beyond 5 acres.
8. The Division represented that maps on file with the small mine permit are not adequate, that the Division needs to be named on the bond, and the disturbance needs to be marked in the field with T-posts.

CONCLUSIONS

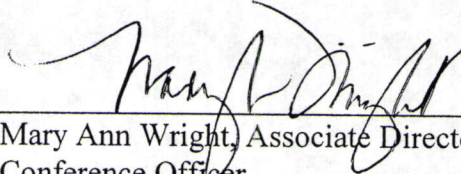
- Mining outside of the boundary area likely occurred. There was not a reclamation surety posted with the state of Utah. The Fact of the Violation (CO) should stand.
- Facts were presented which were taken into consideration of a reassessment of this cessation order. This was difficult abatement that was accomplished within a very extended time frame. See final assessment worksheet for narrative.

ORDER

NOW THEREFORE, it is ordered that:

1. Cessation Order MC-2005-04-04, issued 8-02-05, is hereby affirmed.
2. The violation is provided a final assessment as shown in the attached worksheet.
3. A fine of \$770.00 is assessed and payable 30 days from receipt of this re-assessment.

SO DETERMINED AND ORDERED this 18th day of July 2006



Mary Ann Wright, Associate Director, Mining
Conference Officer
Division of Oil, Gas and Mining
State of Utah